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No. 97-154

Supreme Court, U.S.
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In The

Supreme Court Of The United States

October Term, 1997

ROBERT C. FLANAGAN,

Petitioner,

v.

JUDICIAL REVIEW COUNCIL OF CONNECTICUT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

PETITIONER'S REPLY TO BRIEF OF RESPONDENT IN OPPOSITION

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CAPITAL CASE

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

PETITIONER'S REPLY TO BRIEF OF RESPONDENT
IN OPPOSITION

STATEMENT IN REPLY

The respondent misconstrues the charges and findings of the Judicial Review Council and those of the Connecticut Supreme Court. The original charges upon which Flanagan presented his defense, briefed, and orally argued were later illegally changed by the Connecticut Supreme Court. The original charges read as follows:

> 1. Between March 1, 1992, and October 30, 1995, the Honorable Robert C. Flanagan engaged in a consensual sexual relationship with a married court employee, which conduct resulted in his failure to observe the high standards of conduct so that the integrity and independence of the judiciary might be preserved in violation of Canon 1 of the Code of Judicial Conduct and Section 51-51i(a)(2) of the Connecticut General Statutes. (Petition for

81).

> 2. Between March 1, 1992, and October 30, 1995, the Honorable Robert C. Flanagan engaged in a consensual sexual relationship with a married court employee, which conduct resulted in his failure to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A of the Code of Judicial Conduct and Section 51-51i(a)(2) of the Connecticut General Statutes. Id.

To reiterate, C.G.S. §51-51i provides, in pertinent part:

> (a)...a judge shall be subject, in a manner and under the procedures provided in this chapter to censure for...(2) ***wilful violation of...any canon of judicial ethics.***

Therefore, the Judicial Review Council censured Judge Flanagan for a wilful violation of Canons 1 and 2A of judicial ethics in accordance with C.G.S. §51-51i(a)(2) quoted above, when it found:

> On motion made and seconded, on a vote of nine to three, the Judicial Review Council

> found the Respondent guilty as charged in Charge 1

and

> On motion made and seconded, on a vote of nine to three, the Judicial Review Council found the respondent guilty as charged in Charge 2.

Respondent's statement on page 10 of its brief in opposition simply is NOT true when it states:

> On this case, the Council properly conducted a preliminary investigation to determine if probable cause existed that the petitioner's conduct had violated the Code or Connecticut General Statutes, §51-51i. [Emphasis added].

Judge Flanagan was charged pursuant to C.G.S. §51-51i(a)(2) with a wilful violation of Canon 1 and a wilful violation of Canon 2A.

When contrasting the charges of the Judicial Review Council with the judgment of the Connecticut Supreme Court, it is evident that the Court changed the charges against Judge Flanagan because that court knew that it could not affirm the holding that Judge Flanagan wilfully violated the Canons. Instead of reversing the Judicial Review Council's finding of a wilful violation of the Canons, the Court held that a judge is subject to discipline "as long as he or

she intends to engage in the conduct...." (App. 34). The Connecticut Supreme Court violated Ruffalo when it charged Judge Flanagan with engaging in wilful conduct, rather than a wilful violation of the Canons.

Lastly, the respondent misconstrues the petitioner's brief in another respect. On page 5, last paragraph, the respondent submits, "The petitioner seems to raise two issues. First, he claims that the Council and then the Connecticut Supreme Court, sanctioned him for personal conduct." That is incorrect. The Council sanctioned Judge Flanagan pursuant to C.G.S. §51-51i(a)(2) for a wilful violation of Canon 1 and a wilful violation of Canon 2A. It was after the briefs were filed and after oral argument was held that the Connecticut Supreme Court simply changed the charge and found him guilty, not of a wilful violation of the Canons, but of a wilful act. When the Connecticut Supreme Court impermissibly changed the charges as aforesaid, it violated In Re: Ruffalo, 390 U.S. 544 (1967), and the petitioner's due process rights.

CONCLUSION

The Council charged Judge Flanagan with a violation of C.G.S. §51-51i(a)(2) which requires a wilful violation of a Canon. Ruffalo, supra, was violated when the Connecticut Supreme Court charged Judge Flanagan with wilful conduct and held that engaging in wilful conduct equals a wilful violation of the Canons. The plain wording and meaning of C.G.S. §51-51i as hereinbefore quoted demands a wilful violation of the Canons and not simply a wilful act. For these reasons

and in the interest of justice, the petitioner respectfully requests this Honorable Court to grant his Petition for Certiorari.

RESPECTFULLY SUBMITTED,
ROBERT C. FLANAGAN

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